IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Subhash Chandra and others.
VERSUS
The State of Rajasthan & OTHERS

(S.B. Civil Writ Petition No.3744/2004)

DATE OF ORDER ::: FEBRUARY 16, 2005

P R E S E N T

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. H.S. Sidhu) for the petitioners.
Mr. Kishan Bansal)

Mr. L.R. Upadhyay, Dy.GA, for the respondents no.1 & 2.

BY THE COURT :

Heard learned counsel for the petitioners and learned Dy. Govt. Advocate for respondents no.1 and 2. Nobody has appeared on behalf of respondent no.3.

The petitioner no.1, who was Chairman of Municipal Board, Pilibanga (for short the "Board"), was served with a notice of no confidence motion dated 19.7.2004 (Annex.P/1). The no confidence motion was carried by the vote of total 18 members who were present in the meeting for consideration of no confidence motion. Copy of resolution against the petitioner dated 5.8.2004 is Annex.P/8. The said no confidence motion is under challenge in this writ petition.

According to the learned counsel for the petitioners, the respondent no.3, who is M.L.A. from Pilibanga Constituency, compelled the other members of the Board to cast their votes against the petitioner no.1. Even some of the members were confined through his blue eyed persons Ganga Ram and Pyare Lal who are also the members of the Board. According to learned counsel for the petitioners, Suraj Bhan and Kaka Singh were also confined by respondent no.3 through Ganga Ram and Pyare Lal. The wives of Suraj Bhan as well as Kaka Singh submitted qpplications to the Superintendent of Police, Hanumangarh and S.D.O., Pilibanga levelling alleations against Ganga Ram and Pyare Lal that they have confined their husbands illegally so that they can be pressurised to cast their votes against the petitioner no.1. These applications are placed on record as Annex.P/2 and P/3 respectively. It is also submitted that the respondent no.3 – Local M.L.A. also influenced the members by his political approach to cast the votes against the petitioners in the said meeting. He has also given threat to the petitioner no.2 that in case he will cast vote against motion, then his son Raju's license for fair price shop will be got cancelled. Even one of the Board Member Naresh Kumar submitted an application before District Collector, Hanumangarh on 3.8.2004 alleging that the members of Municipal Board are under pressure of the local M.L.A. and the local M.L.A. is

giving threats to them, therefore, voting may be ordered to be held by secret ballot so that the voters may cast vote independently and not under the pressure of M.L.A. The copy of this application is placed on record as Annex.4. On 5.8.2004, the petitioner no.1 himself submitted an application before the Presiding Officer (S.D.O., Pilibanga) and requested that voting may be through secret ballot papers so that the members may cast their votes without fear of local M.L.A. Apart from the above allegations of presures etc., the petitioners submit that it is mandatory to put the motion for debate but no debate took place on the no-confidence motion as required by Rule 3(6) of the Rajasthan Municipalities (Motion of No Confidence against the Chairman or Vice-Chairman) Rules, 1974 (for short "the Rules of 1974") and without debate, under the pressure of the respondent no.3, the respondent no.2 has drawn the proceedings and recorded that the debate took place and in the debate, number of persons named in para no.9 participated.

It is also submitted that when the respondent no.2 asked the members to raise their hands whether they want to cast their vote in favour of motion or against the motion, one Arvind Joshi objected to it and he stated that the members may be asked to say that we want to remove the Chairman Subhash Godara. On that, the respondent no.2 agreed and he asked the members to

say by raising their hands that they want to remove the Chairman but vote of those persons who did not speak those words were taken in favour of the no confidence motion. It is also alleged that the respondent no.2 himself spoke to the members to raise their hands who did not raise their hands. It was further alleged that the respondent no.2 specifically asked the petitioner no.2 to raise his hand and, therefore, according to the petitioners, the entire no-confidence motion was influenced by the pressure of the respondent no.3 – local M.L.A. and the respondent no.2 – nominee of the Collector actively took part in getting the motion carried.

According to the learned counsel for the petitioners, the procedure was not followed as provided in the Rules of 1974. According to the learned counsel for the petitioners, the procedure as prescribed under Sub-Rules 5, 6 and 7 of Rule 3 of the Rules of 1974 was not followed.

Learned counsel for the petitioners submits that when the procedure is provided by law, no other mode can be adopted. In this regard, learned counsel relied on the judgment delivered by the Hon'ble Supreme Court in the case of J.N. Ganatra vs. Morvi Municipality, Morvi reported in (1996) 9 S.C.C. 495.

According to the learned counsel for the petitioners, all the allegations levelled against the respondent no.3 have not been denied by filing any reply to the writ petition, therefore, these allegations stand fully proved. It is also submitted that the video recording was ordered by the District Collector and the petitioner obtained a copy from the District Collector which is supplied to the petitioners in the form of CD and which has been placed by the petitioners as Annexure-6.

The respondents no.1 and 2 submitted a reply to the writ petition and took a stand that the motion was considered by the house and was carried by vote of all the members present in the house.

The CD produced by the petitioners was played on the computer in Chamber on 15.2.2005 in presence of the petitioner no.1, counsel for petitioners and learned Dy. Government Advocate. Both the parties agreed that what has been given in the CD is correct and true copy of video recording and, therefore, there is no need to see again the video casette which was brought in Court by the respondent no.1's representative.

I have considered the submissions of the learned counsel for the parties.

After going through the entire CD, it appears that the respondent no.2 read over the resolution to the house and before that, the attendance of all the members was recorded. The motion was read over and he told that there will be a debate on the motion. He also informed the members that the maximum period is four hours for discussion and in case, the debate will not be over within four hours, the motion shall be put to vote. About the procedure, how the motion is debated in house was the subject taken up by the local M.L.A. A few members immediately raised their hands but the nominee of the Collector told the house that they should speak about removal of the Chairman in case they want to vote in favour of the motion. On this issue also, there was discussion. Whether the vote should be by secret ballot paper or it is to be by raising hands, the opinion of the house was taken by the Presiding Officer. The Presiding Officer declared that the voting will not be by secret ballot but the members will raise their hands.

After going through the CD, this Court is of the opinion that the motion was put to the house by following the procedure as provided under the Rules of 1975. It was put for debate and the nominee of the Collector did not spoke on the merit of the motion nor he voted for and against. From the CD, this Court is

not convinced that the Presiding Officer instigated any member to vote in faour of motion or even instigated the member that he should raise his hand to pass vote in favour of the motion.

It is the choice of the members to discuss the resolution and it is for the members to speak for or against the resolution. The members, if, have expressed their favour on motion or have shown their dissent to the motion and for that purpose, they may feel convinced from their own reason and there may be short discussion or may be long discussion. The duty of the Presiding Officer in such meeting is to place the motion for debate and see that all members get opportunity to speak on motion and whether to speak for or against the motion or not speak on motion is the sole discretion of the members. If debate was short or long or all were convinced by their own free will, they may straightway vote on motion.

The scope, ambit and duration of discussion within the period provided under the Rules of 1974 is the maximum period for discussion with liberty to the members to decide to conclude the discussion at any time before the maximum period provided under the Rules. In these circumstances, it cannot be said that what happened in the meeting was no discussion on the no-confidence motion. Apart from it, the Courts have

no jurisdiction to examine the merit of the discussion when the members have expressed their opinion for and against the motion.

In this case, it is worthwhile to mention here that the petitioner no.1 himself was present in the meeting throughout. He merely submitted an application requesting that the procedure of secret ballot be accepted. He did not raise any objection before the official nominee that he want to say something against the motion or more time be given for debate.

The allegation of the petitioners that the petitioner no.2 did not raise his hand and he was instigated by the respondent no.2 to raise hands is just contrary to what has been recorded in the CD submitted by the petitioners themselves. Not only this but the petitioner no.2 is the person who pleaded in the writ petition that he was under the threat of the respondent no.3 that in case, he will not cast vote in favour of the motion, his son's license to run ration shop will be cancelled.

There is no dispute that the petitioner no.2 has raised his hand but the allegation is that he raised his hand in favour of the motion under the pressure of the respondent no.2 or under the pressure of the respondent no.3. Looking to the conduct of the

petitioner no.2 in the meeting which was visibly clear and thereafter filing writ petition and saying that he had a threat of the respondent no.3, his allegations levelled in the writ petition cannot be believed. The allegations levelled by the petitioner no.2 are absolutely vague in as much as, he has not mentioned in the writ petition that on what date, the threat was given to him and as a free citizen and claiming himself to be a leader of the public of the ward, what steps he took after the threat. If the leader of the ward feels influenced and under the pressure because of threat by someone about the cancellation of license and he did not raise objection in the open house in the presence of so many persons and who did not complained in time before proper authorities, administration and police, cannot be a man worth reliance. It is difficult to believe such person who can bely the confidence reposed by the public in him, for his commercial interest could not muster courage to protest anywhere against the person who gave threat to him and who succumed to pressure. It is also doubtful whether his stand in meeting was under pressure or now he has pressure to say against the respondent M.L.A.

So far as the contention of the learned counsel for the petitioners that the allegations levelled against the respondent no.3 have not been denied,

therefore, they may be treated as admission against the respondent no.3 are concerned, it is suffice to say that the petitioner came with a positive case and levelled allegations against the respondent no.3 but in this case, in fact, the allegations deserve to be rejected despite the fact that the respondent no.3 did not choose to rebut the same. The petitioner levelled allegation that the respondent no.3 exerted pressure upon the nominee of the Collector, who conducted the proceedings, but the said person, nominee of the Collector, is not party in the writ petition by name. The petitioner also alleged that the respondent no.3's person Ganga Ram and Pyare Lal confined the members Suraj Bhan and Kaka Singh but these persons are also not party in the writ petition. The petitioners admitted in the writ petition that about the complaint of the wives of members Suraj Bhan and Kaka Singh, no action was taken by any authority including S.P., Hanumangarh and nothing has been said that what steps Suraj Bhan and Kaka Singh took when they came out of the said threat. Be that as it may be, lodging of the complaint by the wives of the members is only an allegation and cannot itself become a proof of actual threat particularly when the petitioners in the writ petition itself admitted that no action was taken on these complaints even by those authorities who were not under the influence of anybody.

Further, an application (Annex.P/4) was submitted by Naresh Kumar Kakkar – Member, Ward No.7 wherein he stated that the atmosphere is tensed and there is a pressure upon the members to give vote in favour of the motion. The members are afraid and they cannot vote in open. According to learned counsel for the petitioners, said Naresh Kumar himself did not attend the meeting of no-confidence motion.

The allegation of the petitioner no.1 as levelled in the application dated 5.8.2004 (Annex.P/5) is only to the effect that the members who are in favour of the petitioner are facing threates. For threats, nothing has been said that who is giving. The petitioner no.1 also submitted application that there is pressure of local M.L.A. No particulars have been given in the said complaint. The names of the members of the Ward who were under threats and who were facing the pressure of local M.L.A. have not been given and there is no mention what were the threats over the mebers and what were the pressure of local M.L.A.

As stated above, in the facts of this case, no inference can be drawn that the meeting, which was held to consider motion of no-confidence motion, was influenced by the threats of the respondent no.3 and was not a free expression of the opinion of the members present in the house. The procedure as

provided under the Rules of 1974 was fully complied with.

In view of the above, this writ petition having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

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